

Information About Appeals Before the Dept. of Personnel Administration

(Formerly titled "Statutory Appeals Manual")

Revised February 2005

This manual provides general information about the non-merit statutory appeals procedures of the Dept. of Personnel Administration (DPA). The information is intended to be consistent with the statutory and regulatory provisions of the Government Code and Title 2 of the California Code of Regulations, which govern appeals before DPA. In reading this manual, keep in mind the following:

- The information in this manual does not create a statement of DPA policy.*
- This manual is not intended to substitute for advice an employer or employee may receive from an attorney or labor relations representative.*
- To the extent that information in this manual is inconsistent with the terms of a bargaining agreement between the employee's union and DPA, the bargaining agreement is controlling.*
- The information in this manual is based on bargaining agreements and terms in effect in February 2005. Please make sure you review the union's latest contract for guidance, if the appellant is a represented employee.*
- The information in this manual is subject to change. Please note the revision date above.*

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SECTION 1

General Overview

The Department of Personnel Administration (DPA) is responsible for handling employee appeals of certain types of personnel actions called “non-merit statutory appeals.” DPA Rule 599.906¹ defines non-merit statutory appeals for represented employees; DPA Rule 599.859 defines such appeals for excluded employees. Examples of these appeals are listed below.

The DPA Director has delegated authority to hear certain non-merit statutory appeals to a unit within DPA called the Statutory Appeals Unit, which processes the appeals, holds hearings, and issues proposed decisions. The Statutory Appeals Unit also processes requests for reconsideration, transcripts, and administrative records. The Director of DPA, or his designee, issues the final decision on these appeals.

For **represented** employees, non-merit statutory appeals include, but are not limited to, the following examples:

- Request for reinstatement after automatic (AWOL) resignation
- Request for reinstatement after AWOL of permanent-intermittent (PI) employee
- Appeal of layoff or demotion in lieu of layoff
- Protest of involuntary geographic or non-geographic transfer
- Petition to set aside resignation
- Appeal of denial of merit salary adjustment (MSA)
- Appeal of performance appraisal
- Appeal of denial of sick leave

For **excluded** employees, non-merit statutory appeals include, but are not limited to, the following examples:

- Appeal of layoff
- Protest of involuntary geographic or non-geographic transfer
- Petition to set aside resignation
- Request for reinstatement after automatic resignation
- Denial of out-of-class claim

References

This manual contains references to the Government Code (where laws affecting DPA are found), DPA rules, and bargaining agreements (“contracts”). You may access these [laws](#), [rules](#), and [contracts](#) via links on DPA’s Web site. This manual serves only as a reference and is not intended to supersede existing civil service laws and rules or current contracts.

Filing an Appeal

When an employee’s rights are affected by a particular contract, actions otherwise appealable under the civil service statutes may be only arbitrable or grievable for members of the particular bargaining unit. In those situations, affected employees are only entitled to the remedy set forth in the contract.

¹ All references to rules will be to Title 2, California Code of Regulations (CCR), unless otherwise noted.

Appeals can be filed by fax (916-322-5709), mail, or personal service. Electronic filings or communications are not accepted. When a document is sent by fax to DPA or is personally served upon DPA, it shall be considered "filed" on the date it is actually received at DPA. When a document is sent to DPA by first class, certified, express, or overnight mail, it shall be considered "filed" on the date postmarked on the envelope.

Written appeals filed by mail or personal service should be addressed to:

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814-7243

The Legal Secretary for the Statutory Appeals Unit is available to answer questions regarding the status of an appeal or to provide general information, but cannot counsel or provide legal advice. The telephone number for the Statutory Appeals Unit is (916) 324-3857.

DPA Rule 599.895 requires that all appeals be in writing. Rule 599.903 provides that every appeal filed with DPA shall state the facts upon which it is based and the relief requested in sufficient detail to enable DPA to understand the nature of the proceeding and the parties concerned. To assist DPA in the timely processing of an appeal, appeals and inquiries should include the name, address, classification, Social Security number, and department for which the employee was/is employed. Processing of appeals erroneously sent to the State Personnel Board (SPB) or DPA's Executive Office or Legal Division may be delayed because they must be forwarded to the Statutory Appeals Unit.

DPA Appeals Process

When an appeal is received by DPA, it is delivered to the Legal Secretary of the Statutory Appeals Unit for intake and processing. The Legal Secretary then directs it to the Administrative Law Judge (ALJ) who conducts a preliminary review of the appeal to verify that DPA has jurisdiction and that the appeal is filed in a timely manner. Once jurisdiction and timeliness are established, the matter is set for hearing before the ALJ or an alternate hearing officer. If there are unresolved issues regarding jurisdiction (including timeliness), the matter may initially be set for a jurisdictional hearing.

Untimely Appeal

When an appeal is late, the appellant is not entitled to an evidentiary hearing and the appeal will be denied.

DPA Rule 599.904 states that, except as otherwise provided in the act, upon good cause being shown, DPA may allow such an appeal to be filed within 30 days after the end of the period in which the appeal should have been filed. This rule applies to most non-merit statutory appeals, but not to requests to set aside resignations. DPA has the discretion to schedule a jurisdictional hearing to resolve the matter of whether there is good cause for late filing when an appellant requests it and it is within the 30-day period set forth above. The hearing will be for the purpose of resolving disputed issues of fact. Otherwise, DPA may make a determination of good cause by an internal review process after inviting argument from the parties and representatives.

Appeal Process

Requests for continuances or to take matters off calendar and other prehearing inquiries should be directed to the Legal Secretary of the Statutory Appeals Unit. After a hearing, the ALJ will issue a

proposed decision on the matter, which will be forwarded to the Director of DPA or his designee for final review and decision.

The Director or his designee has authority to adopt, modify, augment, or reject the proposed decision of the ALJ except where otherwise provided by a contract.

When a Decision Becomes Final

Pursuant to Rule 599.910, unless a proper application for rehearing is made, DPA's decision becomes final 30 days after service by DPA of a copy of the decision upon the parties to the proceeding.

Application for Rehearing

DPA Rules 599.859 and 599.907 provide for an appellant or employer to file an application (petition) for rehearing with DPA. A petition for rehearing must be filed with DPA within 30 days of the receipt of the decision. It should be faxed, mailed, or delivered to the Statutory Appeals Unit. If the petition is not filed on time, the decision becomes final and DPA loses jurisdiction to act further in the case.

A party challenging a decision by petition for rehearing must show that due process was denied during the original hearing; new and compelling information now exists that was unavailable at the time of the original hearing; factual findings were made and/or omitted in error; and/or the original decision contained legal errors.

Once an application for rehearing is received by the Statutory Appeals Unit, the other party will be notified and invited to respond. The application will be forwarded to the Director or his designee for review. After review of the application and response by the Director or his designee, the matter may be reset for hearing or the application denied at his discretion. If a matter is reset for hearing, notice will be provided to the parties along with an explanation of the issues to be addressed at the rehearing.

A petition for rehearing need not be filed to exhaust administrative remedies. An appellant or employer may seek judicial review of a DPA decision by filing a writ of mandamus in Superior Court.

SECTION 2

Request for Reinstatement After Automatic Resignation (AWOL)

Authority

Government Code section 19996.2 and Rule 599.826.

Rule

Absence without leave (AWOL) for five consecutive working days, whether voluntary or involuntary, is considered an automatic resignation from State service as of the last day the employee worked. An AWOL-resigned employee may file a request for reinstatement with DPA. Reinstatement will be granted only if the employee provides a satisfactory explanation as to the cause of the absence and his/her failure to obtain leave, and it is found that he/she is ready, able, and willing to discharge his/her duties or has obtained his/her former employer's approval for a leave of absence.

Notice Required by Appointing Power

A notice of automatic resignation may be sent after an employee has been absent without permission (i.e., AWOL) for five consecutive working days. The notice should inform the employee of the facts relied upon by the appointing power to invoke the AWOL statute and of the employee's right to respond to the appointing power at a *Coleman* hearing.² Finally, the notice should inform the employee of the right to make a request for reinstatement directly to DPA.

Time Limits

When an employer notifies an employee in writing of his/her AWOL resignation, and the employee wishes to appeal that AWOL resignation, the employee must file a written request for reinstatement with DPA within 15 days of service of the notice. If an employee is served an AWOL notice by mail, five additional days should be added when determining the date of service. See California Government Code section 18575.

However, an employer is not required to provide written notice to the employee. When an employer does not send a notice of AWOL resignation, the time for an employee to file a request for reinstatement is statutorily extended to 90 days from the effective date of separation.

The time limit for filing an appeal may be extended for 30 days if good cause for the delay is shown.

Type of Hearing

Full evidentiary hearing. The proposed decision of the ALJ is subject to final review by the Director of DPA or his designee.

Issues

The employee bears the burden of proof to satisfactorily explain: (1) why he/she was absent; (2) why he/she failed to obtain leave; and (3) that he/she is ready, able, and willing to return to work or has obtained the employing department's approval for a leave of absence. The employee may be reinstated only if he/she provides satisfactory explanations to all three criteria listed above. The employee is not entitled to back salary if reinstated.

² *Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102.

Note: Issues of whether the AWOL statute was applied properly by the employer and/or whether a *Coleman* hearing was given are for the Superior Court to resolve. They are not within the authority of DPA, and should not be raised before the ALJ.

Contract Variations

Unit 6	CCPOA	Corrections	Article 9.10
Requests for reinstatement after AWOL separation shall be handled solely through the grievance and arbitration procedure of the collective bargaining agreement, beginning at the third step. (Back pay may be awarded.)			
Unit 12	IUOE	Craft and Maintenance	Article 15
Unit 13	IUOE	Stationary Engineers	Article 6
The grievance procedure is the exclusive procedure for resolving disputes regarding automatic resignations pursuant to Government Code section 19996.2.			
Unit 18	CAPT	Psychiatric Technicians	Article 9.12
<p>An automatically resigned employee may appeal to DPA within 30 days from the effective date of the AWOL termination. The ALJ shall decide the following: (1) whether the employee was absent for five consecutive work days; (2) whether that absence was without leave, i.e., without the permission of the employee's appointing power to be absent; (3) whether the employee has a satisfactory explanation for his/her absence; (4) whether the employee has a satisfactory explanation for failing to obtain leave; (5) whether the employee is ready, willing, and able to return to work and/or, if not, whether the employee has leave from his/her appointing power to be absent; and (6) whether the appointing power properly applied the AWOL statute.</p> <p>The ALJ may order reinstatement only if the employee establishes satisfactory reasons for the absence and the failure to obtain leave and if the employee is ready, willing, and able to return to work or has leave to be absent.</p> <p>If the AWOL statute was applied properly by the appointing power and the employee is reinstated, the employee shall receive no back pay for the period of his/her absence. If the AWOL statute was improperly applied by the appointing power, the ALJ may order the employee reinstated and may order back pay. From any such back pay award, there shall be deducted compensation that the employee earned, or reasonably could have earned, during any period of absence. There shall be no back pay for any period when the employee was not ready, willing, and able to return to work.</p>			

SECTION 3

Request for Reinstatement After AWOL of Permanent-Intermittent Employee

Authority

Government Code sections 19996.2 and 19842.5 and Rule 599.828.

Rule

In addition to an AWOL resignation under Section 19996.2, employees who are employed on an intermittent time base may be AWOL resigned under Rule 599.828. That rule provides that the employing department may automatically separate a permanent-intermittent employee who waives three requests to work (a three-waiver AWOL). An employee may appeal the three-waiver AWOL on the grounds that the waivers were excusable because the employee was unable to work due to illness or other good reason.

Note: Government Code section 19100.5 and SPB Rule 448 provide for the separation of permanent-intermittent employees who do not work for over one year. DPA does not hear these cases.

Notice Required by Appointing Power

An appointing power is not required to warn the employee prior to his/her three-waiver AWOL resignation. However, the appointing power is required to notify the employee of his/her separation. The final notice informs the employee of the facts upon which the appointing power relies and of the employee's right to request reinstatement directly to DPA. The appointing power may give the employee a *Coleman*-like hearing, but it is not required.

Time Limits

DPA has interpreted Rules 599.828 and 599.904 to allow the employee 30 days from the date of receipt of the notice of resignation to appeal a three-waiver AWOL resignation.

The time limit for filing an appeal may be extended for 30 days if good cause for the delay is shown.

Type of Hearing

Full evidentiary hearing. The proposed decision of the ALJ is subject to review by the DPA Director or his designee.

Issues

Whether there were three unexcused waivers. The waivers need not be consecutive. However, the employing department must be reasonable in its accounting of waivers. Depending upon the circumstances, counting waivers which are months or years old might not be reasonable. If Rule 599.828 was improperly applied, reinstatement will be granted.

Contract Variations

See variations in Section 2.

SECTION 4

Appeal of Layoff

Authority

Government Code sections 19997-19997.14, 19816.2, 19837, and 19996.21, and Rule 599.845.

Rule

An employee may be laid off by an appointing power when it is necessary because of lack of work or funds, or whenever it is advisable in the interest of economy to reduce staff of any agency. Subject to DPA laws, an employee may select a demotion in lieu of layoff or a transfer, depending upon calculated seniority scores.

An employee may appeal to DPA after receiving a notice of layoff on the grounds that the layoff, demotion in lieu of layoff, or transfer was not made in good faith or was otherwise improper.

Notice Required By Appointing Power

For employees compensated on a monthly basis, notice of the layoff and the reasons therefore must be given in writing 30 days prior to the layoff but not more than 60 days after the date of the seniority credit computation (Government Code section 19997.13).

The appointing power must prepare a rating report for professional, scientific, administrative, management, or executive class employees and provide those employees with a copy. It is called a *Report of Current Performance*. The appointing power must also inform the employee of his/her right to appeal the rating to DPA (Rule 599.845).

Time Limits

The appeal must be filed with DPA within 30 days of the notice of layoff, demotion in lieu of layoff, or transfer in lieu of layoff. The professional, scientific, administrative, management, or executive class employee may appeal the seniority credit computation to DPA within ten days of the receipt of the report (Rule 599.845). The ten-day rule may be extended to 30 days if good cause for delay is shown (Rule 599.904).

Type of Hearing

Full evidentiary hearing. The proposed decision of the ALJ is accepted or rejected by DPA. All cases from one appointing power may be consolidated for hearing.

Issues

DPA may reinstate the employee, with or without back pay, if the procedures set out in the statute and the rules were not followed, the layoff was not made in good faith, or it was otherwise improper. The employee bears the burden of proving one of the three grounds to invalidate the layoff.

Note: A good source regarding layoffs is the [California Civil Service Layoff Manual](#), available on DPA's Web site.

Contract Variations

Unit 1	SEIU	Professional, Administrative, Financial and Staff Services	Article 16.1
Unit 3	SEIU	Professional Educators and Librarians	Article 16.1
Unit 4	SEIU	Office and Allied	Article 16.1
Unit 11	SEIU	Engineering and Scientific Technicians	Article 16.1
Unit 14	SEIU	Printing and Allied Trades	Article 16.1
Unit 15	SEIU	Allied Services	Article 16.1
Unit 16	UAPD	Physicians, Dentists and Podiatrists	Article 15.1
Unit 17	SEIU	Registered Nurses	Article 17.1
Unit 20	SEIU	Medical and Social Services	Article 16.1
Unit 21	SEIU	Education Consultants and Library	Article 16.1
Any dispute regarding the interpretation or application of any portion of the layoff provisions shall be resolved solely through the grievance and arbitration process.			
Unit 2	CASE	Attorneys and Hearing Offices	Article 10.1
Unit 7	CAUSE	Protective Services and Public Safety	Article 17.1
Unit 9	PECG	Professional Engineers	Article 13.1
Unit 18	CAPT	Psychiatric Technicians	Article 9.1
Unit 19	AFSCME	Health and Social Services/Professional	Article 16.1
The hearing officer's decision shall be final; upon its issuance DPA shall adopt the hearing officer's decision as its own.			

SECTION 5

Protest of Geographic Transfer

Authority

Government Code sections 19994.4 and 19841 and Rules 599.714 and 599.714.1. Moving expenses are paid pursuant to Section 19841.

Rule

A department may involuntarily transfer an employee to another position in the same class, or from one location to another, whether in the same position or to a different position in the same class. The employee may file a protest of transfer with DPA, if he/she alleges that the transfer was for the purpose of harassment or discipline (Government Code section 19994.3). A geographic transfer is one where the employee is reasonably required to change his/her residence.

Note: When an employing department includes a transfer as part of the penalty in a notice of adverse action, the action is only appealable to the SPB, pursuant to Government Code section 19579 and following, and *Carole DeHart* (1994) SPB Dec. No. 94-22.

Notice Required

If the transfer requires a change of residence, as defined in Rules 599.714 and 599.714.1, the appointing power must give the employee written notice 60 days before the effective date of the transfer, unless the employee waives this right. The notice must set out in clear and concise language the reasons for the transfer.

Time Limits

The protest must be made to DPA, with a copy to the appointing power, within 30 days of the time the employee is notified of the transfer (Government Code section 19994.4).

Type of Hearing

Full evidentiary hearing. The proposed decision of the ALJ is accepted or rejected by DPA.

Issues

The employee bears the burden of proof that the transfer was made for the purpose of harassment or discipline. If the transfer was for an improper purpose, the employee will be transferred back and be made whole.

Contract Variations

Unit 1	SEIU	Professional, Administrative, Financial and Staff Services	Article 15.1
Unit 2	CASE	Attorneys and Hearing Officers	Article 13.14
Unit 3	SEIU	Professional Educators and Librarians	Article 15.1
Unit 4	SEIU	Office and Allied	Article 15.1
Unit 7	CAUSE	Protective Services and Public Safety	Article 16.11
Unit 9	PECG	Professional Engineers	Article 15.2
Unit 10	CAPS	Professional Scientific	Article 16.4
Unit 11	SEIU	Engineering and Scientific Technicians	Article 15.1
Unit 14	SEIU	Printing and Allied Trades	Article 15.1
Unit 15	SEIU	Allied Services	Article 15.1.15

Unit 16	UAPD	Physicians, Dentists and Podiatrists	Article 14.3
Unit 17	SEIU	Registered Nurses	Article 16.2
Unit 19	AFSCME	Health and Social Services/Professional	Article 15.9
Unit 20	SEIU	Medical and Social Services	Article 15.1
Unit 21	SEIU	Education Consultants and Library	Article 15.2
An involuntary transfer that reasonably requires an employee to change his/her residence may be grieved if the employee believes it was made for the purpose of harassing or disciplining the employee.			
Unit 12	IUOE	Craft and Maintenance	Article 17.6
Unit 13	IUOE	Stationary Engineers	Article 14.5
An involuntary transfer that reasonably requires an employee to change his/her residence may be grieved only if the employee believes it was made for the purpose of harassing or disciplining the employee.			

SECTION 6

Protest of Non-Geographic Transfer

Authority

Government Code sections 19994-19994.4 and Rule 599.714.

Rule

An employee may file a protest of transfer with DPA, if he/she alleges that the transfer was for the purpose of harassment or discipline (Government Code section 19994.3). See also *Johnson v. DPA* (1987) 191 Cal.App.3d 1218; 236 (Cal.Rpts. 853).

Notice Required By Appointing Power

No written notice is required.

Time Limits

The protest must be made to the DPA with a copy to the appointing power within 30 days of the time the employee is notified of transfer (Government Code section 19994.4).

Type of Hearing

Full evidentiary hearing. The proposed decision of the ALJ is accepted or rejected by DPA.

Issues

Whether the purpose of the transfer was to harass or discipline the employee. The appointing power should be prepared to show that the transfer was for legitimate business purposes. If the transfer was for improper purposes, the employee will be transferred back and be made whole.

Contract Variations

Unit 1	SEIU	Professional, Administrative, Financial and Staff Services	Article 15.1
Unit 2	CASE	Attorneys and Hearing Officers	Article 13.14
Unit 3	SEIU	Professional Educators and Librarians	Article 15.1
Unit 4	SEIU	Office and Allied	Article 15.1
Unit 7	CAUSE	Protective Services and Public Safety	Article 16.11
Unit 9	PECG	Professional Engineers	Article 15.2
Unit 10	CAPS	Professional Scientific	Article 16.4
Unit 11	SEIU	Engineering and Scientific Technicians	Article 15.1
Unit 14	SEIU	Printing and Allied Trades	Article 15.1
Unit 15	SEIU	Allied Services	Article 15.1.15
Unit 16	UAPD	Physicians, Dentists and Podiatrists	Article 14.3
Unit 17	SEIU	Registered Nurses	Article 16.2
Unit 19	AFSCME	Health and Social Services/Professional	Article 15.9
Unit 20	SEIU	Medical and Social Services	Article 15.75.1
Unit 21	SEIU	Education Consultants and Library	Article 15.2

An involuntary transfer that does not require the employee to change residence is subject to the complaint procedure if the employee believes it was made for the purpose of harassing or disciplining.

Unit 12	IUOE	Craft and Maintenance	Article 17.6
An appeal of an involuntary transfer which does not reasonably require an employee to change residence shall be subject to the grievance procedure to the department director's level if the employee believes it was made for the purpose of harassing or disciplining the employee.			
Unit 13	IUOE	Stationary Engineers	Article 14.5
An appeal of an involuntary transfer which does not reasonably require an employee to change residence shall be subject to the grievance procedure if the employee believes it was made for the purpose of harassing or disciplining the employee. The transfer may only be appealed to the second level of the grievance process.			

SECTION 7

Petition to Set Aside Resignation

Authority

Government Code section 19996.1 and Rules 599.825-599.826.

Rule

An employee may file a petition to set aside his/her resignation from State service.

Notice Required By Appointing Power

The decision to resign is the employee's, not the employer's.

Note: Rule 599.825 provides that an employee may resign by submitting a "written resignation" to his/her appointing power. An employer who accepts and processes a verbal resignation runs the risk of being unable to produce evidence of the actual resignation and the date of its occurrence.

Time Limits

Thirty days after tender of resignation or the last date of service to the State, whichever is later. No 30-day extension may be granted because the language of the statute is mandatory. See also, *Bidwell v. State of California* (1985) 164 Cal.App.3d 213 (210 Cal.Rptr. 381).

Type of Hearing

Full evidentiary hearing. The proposed decision of the ALJ is accepted or rejected by DPA.

Issues

Whether resignation was given or obtained by mistake, fraud, duress, undue influence, or was otherwise not free and voluntary. The employee bears the burden of proof that the resignation should be set aside.

If resignation was improperly obtained, reinstatement will be ordered and back pay and benefits awarded. After the first six months, the amounts the employee earned or reasonably could have earned will also be deducted.

Contract Variations

None.

SECTION 8

Appeal of Denial of Merit Salary Adjustment

Authority

Government Code sections 19832 and 19836 and Rules 599.684 and 599.859.

Rule

A rank-and-file employee may file an appeal from the denial of a merit salary adjustment (MSA) with DPA. An excluded employee must follow the grievance procedure set forth at DPA Rule 599.859.

Notice Required By Appointing Power

Except as otherwise provided by statute for units 5, 8, and 16, a rank-and-file employee must be informed when an MSA will be denied and must be advised of the reason for denial. The appointing power thereafter certifies the action to DPA. (The procedures applicable for managers and supervisors are set forth in Article 14 of the DPA rules.)

Time Limits

Within ten days of notice, the employee may file a written request with the appointing power for reconsideration under the agency's grievance procedure. Within 15 days after exhausting the departmental remedy, the employee may appeal to DPA (Rule 599.684).

The time limit may be extended for 30 days if good cause for the delay is shown (Rule 599.904).

Type of Hearing

The hearing is conducted by an ALJ.

Issues

Whether the employee has met reasonable standards of efficiency required for his/her position. DPA shall sustain the appointing power if the determination to deny the MSA is supported by substantial evidence (Rule 599.684).

Contract Variations

Unit 1	SEIU	Professional, Administrative, Financial and Staff Services	Article 11.4
Unit 3	SEIU	Professional Educators and Librarians	Article 11.4
Unit 4	SEIU	Office and Allied	Article 11.4
Unit 11	SEIU	Engineering and Scientific Technicians	Article 11.4
Unit 14	SEIU	Printing and Allied Trades	Article 11.4
Unit 15	SEIU	Allied Services	Article 11.4
Unit 20	SEIU	Medical and Social Services	Article 11.4
Unit 21	SEIU	Education Consultants and Library	Article 11.2
Denial of the MSA shall be subject to the grievance and arbitration process.			
Unit 6	CCPOA	Corrections	Article 15.03
MSAs are subject to the mini-arbitration procedures in Section 6.13 of the contract.			

Unit 7	CAUSE	Protective Services and Public Safety	Article 16.11
Denial of an MSA may be appealed to the third step of Article 6 (department head) as the final level of review.			
Unit 8	CDFF	Firefighters	Article 17.1
The MSA program is replaced by Performance Salary Adjustments (PSA). At the discretion of the appointing power, employees who are not granted a PSA may be reconsidered for a PSA at any future time, but at least within 90 days.			
Unit 9	PECG	Professional Engineers	Article 3.2
Unit 16	UAPD	Physicians, Dentists, and Podiatrists	Article 10.2
Unit 19	AFSCME	Health and Social Services/Professional	Article 7.2
Notwithstanding DPA Rule 599.684, an employee whose MSA is denied may pursue grievance and arbitration.			

SECTION 9

Appeal of Performance Appraisal

Authority

Government Code sections 19992-19992.4 and Rule 599.798(d) (Permanent Employees).
Government Code sections 19992.8-19992.13 (Managerial Employees).

Rule

A rank-and-file employee may file an appeal of a performance report with DPA (Rule 599.798(d)). Government Code section 19992.13 provides for DPA to establish a procedure whereby a managerial employee may appeal his/her performance appraisal to the appointing power. Rule 599.859 establishes a procedure whereby excluded employees may grieve performance appraisals.

Note: Appeals of rejections during probation are not handled by DPA but are heard by the SPB. Rule 599.795 requires that probation reports be written. However, the requirement is only directory and not appealable.

Notice Required by Appointing Power

An appointing power is expected to provide each permanent employee with a yearly written performance report, once the employee has completed probation.

Time Limits

Within 30 days of receipt of the report. The time limit may be extended for 30 days if good cause for the delay is shown (Rule 599.904).

Type of Hearing

The hearing is conducted by an ALJ.

Issues

Whether the report has been used to abuse, harass, or discriminate against the employee (Rule 599.798).

Contract Variations

Unit 1	SEIU	Professional, Administrative, Financial and Staff Services	Article 13.4
Unit 3	SEIU	Professional Educators and Librarians	Article 13.4
Unit 4	SEIU	Office and Allied	Article 13.4
Unit 11	SEIU	Engineering and Scientific Technicians	Article 13.4
Unit 14	SEIU	Printing and Allied Trades	Article 13.4
Unit 15	SEIU	Allied Services	Article 13.4
Unit 20	SEIU	Medical and Social Service	Article 13.4
An employee may grieve the content of his/her performance appraisal through the department level of the grievance procedure when he/she receives a substandard rating in either a majority of the performance factors or an overall substandard rating.			
Unit 5	CAHP	Highway Patrol	Article XIV at 65

Annual, interim, and transfer performance appraisals shall be grievable up to Level III of the grievance procedure. Other forms of documentation relative to performance are not grievable or complainable.			
Unit 6	CCPOA	Corrections	Article 6.13
Performance reports are subject to mini-arbitration.			
Unit 7	CAUSE	Protective Services and Public Safety	Article 6.17
Performance appraisals and performance standards may be grievable up to the third level of the grievance process.			
Unit 8	CDFF	Firefighters	Article 17.1
An employee whose performance salary adjustment is denied may grieve that action using the minor discipline process. The grounds for such appeals are limited by contract.			
Unit 12	IUOE	Craft and Maintenance	Article 16.7
An employee may file a grievance about his/her performance appraisal when he/she receives a substandard rating in a majority of the performance factors. A performance appraisal is not subject to arbitration.			
Unit 16	UAPD	Physicians, Dentists and Podiatrists	Article 12.5
Unit 19	AFSCME	Health and Social Services/Professional	Article 15.7
When a Performance Appraisal Summary results in any "improvement needed" rating, the employee may grieve the evaluation up to and including the third step of the grievance procedure.			
Unit 17	SEIU	Registered Nurses	Article 14.1
An employee may grieve the content of his/her annual performance appraisal through the third (DPA) step: (1) when he/she receives a substandard rating of the performance factors, or (2) when negative comments are inconsistent with the actual ratings received, or (3) when rating factors are not used and the narrative evaluation includes negative comments. DPA shall sustain the evaluation except where supported by substantial evidence to the contrary. When a grievance is granted on this subject, the annual performance appraisal will be modified to reflect the outcome of the grievance procedure and the original performance appraisal will be removed from the file.			
Unit 18	CAPT	Psychiatric Technicians	Article 9.11
An employee may grieve the content of his/her performance appraisal through the second step of the grievance procedure when he/she receives a substandard rating in either a majority of the performance factors or an overall substandard rating, or when an employee presents evidence that a substandard rating is not based on factual information. When a grievance is granted in relation to this performance appraisal, the IDP will be modified to reflect the outcome of the grievance settlement.			
Unit 21	SEIU	Education Consultants and Library	Article 13.9
When an employee receives substandard ratings in a majority of the performance factors, the employee may grieve the content of his/her performance appraisal through the third step of the grievance procedure, which shall be the final step of appeal.			

SECTION 10

Appeal of Denial of Sick Leave

Authority

Government Code sections 19859-19868.3 and Rules 599.745-599.751.

Rule

An employee may appeal to DPA the failure or refusal of the appointing power to approve a request for sick leave (Rule 599.751).

Notice Required By Appointing Power

No specific notice required. The employee would be aware of failure or refusal of appointing power to approve request for sick leave.

Time Limits

Thirty days from the date of the failure or refusal. The time limit may be extended 30 days if good cause for the delay is shown (Rule 599.904).

Type of Hearing

The appeal is handled internally by DPA staff.

Issues

Whether absence was necessary because of one of the enumerated reasons in Rule 599.745. Whether employee presented substantiating evidence when requested to do so pursuant to Rule 599.749. Whether appointing power was reasonable in requiring substantiating evidence and/or refusing to accept the substantiating evidence supplied pursuant to Rule 599.749.

Contract Variations

All of the existing contracts contain unique provisions regarding sick leave.

SECTION 11

Appeal of Denial of Out-of-Class Claim

Authority

Government Code sections 19815.4 (e) and 19818.16 and Rule 599.810.

Rule

An employee may file a claim with DPA for additional reimbursement for duties performed that are outside the scope of his/her present classification; DPA has authority to authorize additional reimbursement for those duties. The award (reimbursement) shall be no greater than the service performed for one year preceding the filing of the claim. The employee may also appeal to DPA when the allocation or reallocation of his/her position affects him or her.

The original claim will be reviewed internally by the Classification and Compensation Division and an analysis will be prepared. The analysis will be forwarded to the Labor Relations Division for review by a Labor Relations Officer (LRO). The LRO will issue a preliminary determination.

An excluded employee may formally appeal the LRO's preliminary determination to DPA's Statutory Appeals Unit.

Notice Required

The preliminary determination will include the following notice:

"If you disagree with this preliminary determination, you have the right to file an appeal with the Department of Personnel Administration, Statutory Appeals Unit, 1515 S Street, North Bldg., Suite 400, Sacramento, CA 95814, within 30 calendar days of service of this determination. You have five additional days if the notice was sent by mail within California..."

Time Limits

The excluded employee has 30 calendar days from service of the preliminary determination. He/she will have five additional days based on the mailing. If the employee does not appeal within that timeframe, the preliminary determination will become final.

Type of Hearing

The ALJ will not hold a full evidentiary hearing. The ALJ will review and enter the preliminary determination and supporting documents into the record and allow the parties the opportunity to supplement the record, subject to rebuttal. The ALJ will issue a proposed decision for review by the Director or his designee. The final decision will issue from the Director or his designee.

Issues

Whether the evidence supports the preliminary determination on the issues framed by the original analysis.

Contract Variations

All of the existing contracts provide for the employee to submit an Out-of-Class Claim to grievance and arbitration.